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असाधारण

EXTRAORDINARY

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PART II—Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Bill was introduced in Lok Sabha on 16th June, 1977:—

BILL No 50 OF 1977

A Bill further to amend the Presidential and Vice-Presidential Elections Act, 1952.

Be it enacted by Parliament in the Twenty-eighth Year of the Republic of India as follows:—

1. This Act may be called the Presidential and Vice-Presidential Elections (Amendment) Act, 1977.

Short title.

2. In the Presidential and Vice-Presidential Elections Act, 1952, for Part III, the following Part shall be substituted, namely:—

Substitution of new Part for Part III of Act 31 of 1952.

'PART III

DISPUTES REGARDING ELECTIONS

13. In this Part, unless the context otherwise requires,—

Definitions.

(a) "candidate" means a person who has been or claims to have been duly nominated as a candidate at an election;

(b) "costs" means all costs, charges and expenses of, or incidental to, a trial of an election petition;

(c) "returned candidate" means a candidate whose name has been published under section 12 as duly elected.

Authority
to try,
election
petitions.

14. (1) No election shall be called in question except by presenting an election petition to the authority specified in sub-section (2).

(2) The authority having jurisdiction to try an election petition shall be the Supreme Court.

(3) Every election petition shall be presented to such authority in accordance with the provisions of this Part and of the rules made by the Supreme Court under article 145.

Presenta-
tion of
petition.

14A. (1) An election petition calling in question an election may be presented on one or more of the grounds specified in sub-section (1) of section 18 and section 19, to the Supreme Court by any candidate at such election, or—

(i) in the case of Presidential election, by twenty or more electors joined together as petitioners;

(ii) in the case of Vice-Presidential election, by ten or more electors joined together as petitioners.

(2) Any such petition may be presented at any time after the date of publication of the declaration containing the name of the returned candidate at the election under section 12, but not later than thirty days from the date of such publication.

Form of
petitions,
etc, and
procedure.

15. Subject to the provisions of this Part, rules made [whether before or after the commencement of the Presidential and Vice-Presidential Elections (Amendment) Act, 1977] by the Supreme Court under article 145 may regulate the form of election petitions, the manner in which they are to be presented, the persons who are to be made parties thereto, the procedure to be adopted in connection therewith and the circumstances in which petitions are to abate, or may be withdrawn, and in which new petitioners may be substituted, and may require security to be given for costs.

Relief
that
may be
claimed
by the
petitioner.

16. A petitioner may claim either of the following declarations:—

(a) that the election of the returned candidate is void;

(b) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected.

Orders
of the
Supreme
Court.

17. (1) At the conclusion of the trial of the election petition, the Supreme Court shall make an order—

(a) dismissing the election petition; or

(b) declaring the election of the returned candidate to be void; or

(c) declaring the election of the returned candidate to be void and the petitioner or any other candidate to have been duly elected.

(2) At the time of making an order under sub-section (1), the Supreme Court shall also make an order fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid.

18. (1) If the Supreme Court is of opinion,—

(a) that the offence of bribery or undue influence at the election has been committed by the returned candidate or by any person with the consent of the returned candidate; or

(b) that the result of the election has been materially affected—

(i) by the improper reception or refusal of a vote, or

(ii) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act; or

(iii) by reason of the fact that the nomination of any candidate (other than the successful candidate), who has not withdrawn his candidature, has been wrongly accepted; or

(c) that the nomination of any candidate has been wrongly rejected or the nomination of the successful candidate has been wrongly accepted,

the Supreme Court shall declare the election of the returned candidate to be void.

(2) For the purposes of this section, the offences of bribery and undue influence at an election have the same meaning as in Chapter IXA of the Indian Penal Code.

19. If any person who has lodged an election petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the Supreme Court is of opinion that in fact the petitioner or such other candidate received a majority of the valid votes, the Supreme Court shall, after declaring the election of the returned candidate to be void, declare the petitioner or such other candidate, as the case may be, to have been duly elected:

Provided that the petitioner or such other candidate shall not be declared to be duly elected if it is proved that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election.

20. The Supreme Court shall, after announcing the orders made under section 17, send a copy thereof to the Central Government, and on receipt of such copy the Central Government shall forthwith cause the order to be published in the Official Gazette.

Grounds for declaring the election of a returned candidate to be void.

Grounds for which a candidate other than the returned candidate may be declared to have been elected.

Transmission of orders to the Central Government and its publication.

STATEMENT OF OBJECTS AND REASONS

Prior to the Constitution (Thirty-ninth Amendment) Act, 1975, article 71 as it then stood, specifically provided that doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final. New article 71 substituted by the Constitution (Thirty-ninth Amendment) Act, however, empowered Parliament to constitute an authority or body for inquiring into and deciding doubts and disputes relating to Presidential and Vice-Presidential elections and further provided that the decision of such authority or body shall not be called in question by any Court.

On the 3rd February, 1977, the President promulgated an Ordinance to amend the Presidential and Vice-Presidential Elections Act, 1952, so as to substitute a new Part for Part III of that Act providing for the setting up of an authority consisting of nine members—three to be nominated by the Speaker of the Lok Sabha—one of whom shall be the Chief Justice or retired Chief Justice of the Supreme Court and another a person having knowledge of election law, three to be elected by the Lok Sabha and the remaining three to be elected by the Rajya Sabha. In addition to this substantive provision constituting the authority, the Ordinance contained certain other provisions relating to procedure and matters of detail. In that Ordinance the scope and amplitude of the offences of bribery and undue influence were circumscribed so that those expressions would not have the meanings assigned to them in Chapter IXA of the Indian Penal Code, but would be merely corrupt practices having the meanings assigned to those expressions in the Representation of the People Act, 1951.

After the general election, Government decided not to replace that Ordinance by parliamentary legislation and the Ordinance was allowed to lapse. Government consider that it is not only appropriate, but also desirable to restore the position obtaining prior to the Constitution (Thirty-ninth Amendment) Act, 1975, with regard to the forum for the trial of election petitions challenging Presidential and Vice-Presidential elections, including the scope and amplitude of the offences of bribery and undue influence.

The Bill seeks to achieve the above object by making an amendment in the Presidential and Vice-Presidential Elections Act, 1952, so as to specifically provide as required by new article 71, that the Supreme Court shall be the authority for the trial of disputes relating to Presidential and Vice-Presidential elections and thus restore the earlier position.

NEW DELHI;

P. C. CHUNDER.

The 31st May, 1977.

S. L. SHAKDHER,
Secretary-General.